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SUBJECT: SPAIN: CHIEF PROSECUTOR FORCED TO QUIT

11. (U) Attorney General Candido Conde Pumpido forced the Chief Prosecutor of Spain's National Court, Eduardo Fungairino, to step down for alleged mismanagement of terrorism cases under his supervision. Fungairino, a highly-respected 26-year veteran of the National Court, will move to a position with the Supreme Court and retain a role in terrorism cases. Fungairino's deputy, Jesus Santos, will take over duties as Chief Prosecutor, at least on until a successor is named. Conde Pumpido remonstrated Fungairino for failing to secure Supreme Court confirmation of the sentences of al-Qa'ida members convicted in September 2005 (thus allowing two terrorists to exit prison after having served only half of their sentences) and for failing to push for the completion of the 2004 Madrid train bombing investigation. However, Fungairino's supporters claim that the Zapatero government removed Fungairino because of his strong opposition to a negotiated settlement with ETA, negotiations that may require the cooperation of the National Prosecutor's office.

12. (U) The story immediately developed political overtones, with the Socialist-leaning "El Pais" running lengthy descriptions of Fungairino's failings and incompetence and serving as a platform for Conde Pumpido's version of events. Conde Pumpido accused Fungairino of failing to consult with colleagues and of dominating judicial relations with the U.S. Department of Justice and with EU counterparts. The centrist "El Mundo," which is strongly anti-ETA, ran a headline declaring that Fungairino was removed for impeding government negotiations with ETA. "El Mundo" suggested that Conde Pumpido decided to dismiss Fungairino because he had blocked the banned ETA front group Batasuna from holding a public meeting, despite hints from Zapatero that such a meeting might be allowed in the interest of steering ETA towards the political arena. The opposition Popular Party and center-right judicial organizations rose to Fungairino's defense, while center-left groups and Basque nationalist organizations hailed the dismissal.

//EARLY RELEASE OF CONVICTED TERRORISTS//

13. (U) The main failure cited by Conde Pumpido - the early release of convicted terrorists - is troubling, but responsibility for the issue rests with several actors. Under Spanish law, a detainee must be released after serving half their maximum prison term if the sentences have not been confirmed by the Supreme Court. The problem in this instance is that many of the detainees in the Barakat Yarkas case were held in pre-trial detention for nearly four years, time that counts towards their sentences. Since many of those convicted received jail terms of eight or fewer years (see full listing in para 5), the half-way point came nearly immediately after their September 2005 convictions, giving the notoriously slow Spanish legal system little time to win confirmation of the convictions by the Supreme Court. It was up to both the Prosecutor's office and the Supreme Court to

shuttle the cases through, and they failed to do so in time to prevent the release of two al-Qa'ida cell members. The government is expected to move quickly now to prevent further releases.

//COMMENT//

¶4. (SBU) The Embassy has enjoyed a close, collaborative relationship with Fungairino for many years. While it is true that he sometimes seemed to have difficulty delegating responsibility, he was also seen as a key leader by many Spanish prosecutors and a brilliant legal strategist. It appears that his personal and political differences with Conde Pumpido were the main cause of his removal, though the inability to prevent the early release of the terrorist convicts is difficult to defend. Regardless of the political motives surrounding Fungairino's removal, his departure will hurt U.S.-Spain judicial cooperation, at least in the short term. Fungairino was a devoted anti-terrorism activist who pursued close cooperation with the USG and with EU allies in terrorism cases. One piece of good news is that Fungairino will reportedly remain a member of the U.S.-Spain Bilateral Counterterrorism Experts Working Group, where he has played a positive role in smoothing over conflicts generated by differences in the U.S. and Spanish judicial systems. Also, Jesus Santos, Fungairino's temporary replacement, is well and favorably known to the Embassy. However, this does not outweigh the loss of so valuable an interlocutor in the National Prosecutor's office.

//TERRORIST SENTENCES - POSSIBLE RELEASE DATES//

¶5. (U) Status of terrorists convicted in Barakat Yarkas case.
(NOTE: Half-way marks vary because pre-trial detention times

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varied):

-- Said Chedadi - 8 year sentence. Released November 17 after completing half of his sentence.

-- Mohamed Najib Chaib - 8 year sentence. Released January 20.

-- Imad Eddin Barakat Yarkas - 27 year sentence. Could be released in May 2015.

-- Osama Darra - 11 year sentence. Could be released in June 2007.

-- Jasem Mahboule - 11 year sentence. Could be released in June 2007.

-- Jose Luis Galan - 9 year sentence. Could be released in August 2006.

-- Abdulla Khayata Kattan - 9 year sentence. Could be released in July 2006.

-- Mohamed Zaher - 9 year sentence. Could be released in May 2006.

-- Abdalrahman Alarnot - 8 year sentence. Could be released in March 2008.

-- Mohamed Needl Acaid - 8 year sentence. Could be released in May 2006.

-- Sadik Meriziak - 8 year sentence. Could be released in September 2007.

-- Abdulaziz Benyaich - 8 year sentence. Could be released in November 2007.

-- Hassan al Hussein - 8 year sentence. Could be released in September 2007.

-- Taysir Alony - 7 year sentence. Could be released in March 2008.

-- Kamal Hadid Chaar - 7 year sentence. Could be released in November 2006.

-- Mohamed Ghaleb Kalaye Zouaydi - 9 year sentence. Could be released in October 2006.

-- Jamal Hussein Hussein - 7 year sentence. Could be released in April 2008.

-- Dris Chebli - 6 year sentence. Could be released in June 2006.
AGUIRRE